

EXHIBIT 50

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESAL
PRICE LITIGATION

MDL DOCKET NO.
CIVIL ACTION
01CV12257-PBS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

_____ /

DEPOSITION OF
CHARLES DUARTE
MARCH 22, 2006
CARSON CITY, NEVADA

REPORTED BY: STEPHANIE ZOLKOWSKI CCR 283
COMPUTER-ASSISTED TRANSCRIPTION BY: caseCAtalyst

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 THE WITNESS: It's not confidential.

2 MS. BRECKENRIDGE: Is that your legion or
3 Comprehensive Cancer Center's legion?

4 MR. LITOW: I believe -- what do you mean by
5 legion?

6 MS. BRECKENRIDGE: The Highly Confidential
7 legion at the bottom.

8 MR. LITOW: I don't know.

9 I would like to ask the court reporter to
10 mark as Duarte Exhibit 10 a document bearing bates
11 number CCCN 52.

12 (Exhibit 10 marked for identification.)

13 BY MR. LITOW:

14 Q Mr. Duarte, do you recognize this document?

15 A Yes.

16 Q What is this document?

17 A Looks like an email to Chava Peebles.
18 Didn't recognize her name.

19 Q Who is Chava Peebles?

20 A I am assuming she's affiliated with US
21 Oncology, which is Comprehensive Cancer Centers of
22 Nevada.

23 Q I would like to direct your attention to the
24 first paragraph, third sentence of that, which states,
25 "As you can see we are requesting approval to pay the

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1 lesser of billed charge or a 120 percent of the
2 maximum allowed for those codes. (2002 Medicare is
3 what we reference as the current maximum allowed.)
4 This will be done retroactively to April 1, 2004."

5 Do you see that?

6 A Yes.

7 Q Do you know for what are the payments
8 referred to in that sentence?

9 A Yes.

10 Physician services, specifically what are
11 called medicine codes. These are physician services
12 administered in the office setting.

13 Q Does the payment relate to drugs in any way
14 or is it just for services?

15 A It's for physician services. These are rates
16 associated with what's called the current procedural
17 terminology set of codes. CPT codes.

18 Q I would like to direct your attention to the
19 second paragraph, first sentence. "There are two
20 other things you should keep in mind. First, the
21 adjustment does not put the rates as they were prior
22 to May 2003."

23 Do you see that?

24 A Yes.

25 Q How do the rates change in May 2003, if you

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1 recall?

2 A In May 2003, the legislature required us to

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3 reduce physician reimbursements on, I forget the exact
4 levels, but to reduce them from what we had in
5 standing in our existing policies, which in some cases
6 reimbursed particularly procedure lists as much as a
7 174 percent of Medicare fee schedule. 2002 Medicare
8 fee schedule.

9 And so we revised that back to ranges of
10 approximately 80 to a hundred percent.

11 we then were -- because of access problems,
12 particularly with pediatric subspecialists, asked to
13 change the rates.

14 And there was a lot of pressure on us because
15 many of these subspecialists were referring children
16 out of state and not taking care of them any more.
17 Particularly in Southern Nevada hospitals.

18 We were asked to raise the rates particularly
19 associated with the medicine code set. So we sought
20 CMS approval for a State Plan amendment to revise
21 those codes retroactive to April 1, 2004.

22 I think we got it approved in June or July of
23 '04.

24 Q Just so I understand it, in May 2003, these
25 particular rates were reduced; is that correct?

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1 A That's right.

2 Q And then subsequent to that there were
3 concerns raised by primarily pediatricians about the
4 levels of reimbursement which created concerns, access

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5 concerns, in your department?

6 A Actually --

7 MS. BRECKENRIDGE: Objection. Form.

8 THE WITNESS: -- specifically they were
9 medical and surgical subspecialists who primarily
10 served pediatric patients.

11 These would be individuals such as pediatric
12 nephrologists, pediatric oncologists and pediatric
13 cardiologists who were very concerned about the change
14 in reimbursement.

15 BY MR. LITOW:

16 Q They expressed those concerns to you,
17 correct, or to the Medicaid employee's, correct?

18 A Yes.

19 To me, to the Governor, to Mr. Wilden to a
20 variety of other people.

21 Q As a result of those concerns the rate was
22 changed? It was increased; is that correct?

23 A That is correct.

24 It was done retroactive to April 1st.

25 Q What evidence did you have other than the

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1 complaints from these particular providers that the
2 reimbursement rates were insufficient?

3 A The fact that we were receiving concerning
4 calls from parents whose very severely ill children
5 were having to be shipped out of state to California
6 facilities was significant evidence to me that we were

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7 losing access to care for these critical pediatric
8 subspecialists.

9 We were paying for those transports to a
10 number of hospitals in California and paying for
11 services to pediatric physician groups in California.

12 Q Do you know whether these payments included
13 reimbursement for administration of drugs?

14 A I don't know specifically.

15 Excuse me. Yes. They do include, I think
16 the medicine code range does include, that.

17 But you might want to confirm that with Miss
18 Lawrence.

19 Q Do you know whether you printed out this
20 email?

21 A No, I do not. I usually don't.

22 Q You don't print out emails; is that correct?

23 A It's not my practice.

24 Q Do you know what you did with the email? Did
25 you delete it? Do you still have it?

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1 A I may still have it. I archive my emails.

2 MR. LITOW: Let's take a lunch break now.

3 (Lunch.)

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5 EXAMINATION

6 BY MR. DILLON:

7 Q Mr. Duarte, my name is Chris Dillon. We were
8 introduced this morning. I represent Warrick